

Christiana Trust v Catuogno
2019 NY Slip Op 31530(U)
May 24, 2019
Supreme Court, New York County
Docket Number: 850330/2014
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

INDEX NO. 850330/2014

CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS
FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT
AS TRUSTEE OF ARLP TRUST 5,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 004

- v -

PAMELA CATUOGNO, THE BOARD OF MANAGERS OF PARC
VENDOME CONDOMINIUM, NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE, PARKING VIOLATIONS BUREAU,
JOHN DOE #1 THROUGH JOHN DOE #12

DECISION AND ORDER OF
REFERENCE

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 84, 85, 86, 87, 88,
89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111,
112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127

were read on this motion to/for JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment and to appoint a referee is granted.

Background

This foreclosure action arises out of an apartment located at 353 West 56th Street in
Manhattan. In 2008, defendant Catuogno executed a loan for \$1.425 million for the property.
Plaintiff claims that Catuogno stopped making payments in May 2009.

In opposition, Catuogno complains that she has no idea why plaintiff wants to amend the
caption to refer to plaintiff as US Bank National Association. Catuogno contends that US Bank
did not move to be added as a party and, therefore, has no standing to make the instant motion.

The Board of Managers of Parc Vendome Condominium ("Condo") also responded to
plaintiff's motion. The Condo claims that it seeks to ensure that plaintiff is not seeking summary
judgment against the Condo. The Condo contends that its common charges lien has priority over
surplus funds after payment of plaintiff's first mortgage lien.

Discussion

As initial matter, plaintiff has satisfied its prima facie burden for summary judgment. Catuogno's contention that US Bank does not have standing misses the point. As plaintiff explained in its moving papers, the mortgage was assigned to US Bank *after* the commencement of this action in June 2017. That is why plaintiff wants to amend the caption. Moreover, the issue of standing relates to plaintiff's possession of the note at the time the action is commenced rather than what occurs while the litigation is pending (*see Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]). Accordingly, Catuogno failed to raise an issue of fact in opposition.

With respect to the Condo's "opposition," the Court hereby severs the Condo's cross-claims against Catuogno. Obviously, the Condo may seek surplus funds if plaintiff secures a judgment of foreclosure and sale and the property is sold at auction.

Accordingly, it is hereby

ORDERED that the branch of plaintiff's motion for summary judgment against defendant Pamela Catuogno is granted and any affirmative defenses and counterclaims are severed and dismissed; and it is further

ORDERED that the branch of plaintiff's motion for a default judgment in favor of plaintiff against all non-appearing defendants is granted; and it is further

ORDERED that the cross-claims asserted by defendant the Board of Managers of Parc Vendome Condominium are severed from the instant action; and it is further

ORDERED that Ronald Zerzima, Esq., 271 North Ave Suite 908,
New Rochelle, NY 10801 914-633-5600 is

hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to

Plaintiff for principal, interest and other disbursements advanced as provided for in the note and mortgage upon which this action is brought, and to examine whether the mortgaged property can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that she/he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of her/his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for herself/himself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale

within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that the caption be amended to insert US Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust as plaintiff and to remove John Doe as a part defendant, and the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
US BANK NATIONAL ASSOCIATION AS
LEGAL TITLE TRUSTEE FOR TRUMAN 2016
SC6 TITLE TRUST,

Plaintiff,

v.

PAMELA CATUOGNO, THE BOARD OF
MANAGERS OF PARC VENDOME
CONDOMINIUM, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE,
PARKING VIOLATIONS BUREAU

Defendant(s).

-----X

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added and removed; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/supctmanh)]; and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

Next Conference: November 12, 2019 at 2:15 p.m. If plaintiff has moved for a judgment of foreclosure and sale before the conference, then plaintiff can seek an adjournment. Please consult the part's rules for information about how to obtain an adjournment. An appearance is required if a motion for a JFS has not been made; counsel appearing for plaintiff must come prepared to explain the delay or interest may be tolled.

5/24/19

DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: