

<b>Godette v Mortgage Elec. Registration Sys.</b>
2019 NY Slip Op 31532(U)
April 1, 2019
Supreme Court, Queens County
Docket Number: 709010/18
Judge: Timothy J. Dufficy
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**ORIGINAL**

**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**

-----X  
**CHRISTINE GODETTE,**

**Plaintiff,**

**-against-**

**Index No.: 709010/18**

**Motion Date: 11/1/3/18**

**Mot. Seq. No.: 1 & 2**

**MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS and CARRINGTON MORTGAGE  
SERVICES, LLC,**

**Defendants,**

-----X  
The following numbered papers were read on this motion by defendant Carrington Mortgage Services, LLC (Carrington) to dismiss the complaint, pursuant to CPLR 3211(a)(1) and (a)(7); and, the separate notice of motion by defendant Mortgage Electronic Registration Systems (MERS) for similar relief.

**PAPERS  
NUMBERED**

Notices of Motion - Affidavits - Exhibits.....	EF 12 - 49
Answering Affidavits - Exhibits .....	EF 53 - 56
Reply Affidavits .....	EF 57 - 58

As an initial matters, these motions, designated as Motion Sequence Nos. 1 and 2 are consolidated for purposes of disposition and determined, as follows: .

Upon the foregoing papers it is ordered the motion by defendant Carrington Mortgage Services, LLC (Carrington) to dismiss the complaint, pursuant to CPLR 3211(a)(1) and (a)(7) and the separate notice of motion by defendant Mortgage Electronic Registration Systems (MERS) also seeking to dismiss the complaint, pursuant to CPLR 3211(a)(1) and (a)(7), are both granted.

This is an action, pursuant to RPAPL Article 15, to compel determination of a claim to certain real property, known as 2202 Loretta Road, Far Rockaway, New York 11961. Plaintiff executed a mortgage against the property, in favor of nonparty Olympia Mortgage Corporation (Olympia), on May 25, 2001, securing a note evidencing an

**FILED**  
**APR - 5 2019**  
**COUNTY CLERK**  
**QUEENS COUNTY**

indebtedness, in the principal amount of \$282,677.00. On July 24, 2002, Olympia commenced an action against plaintiff to foreclose on said mortgage (Index No. 19507/02). On January 10, 2003, Olympia was awarded a Judgment of Foreclosure and Sale. On October 21, 2005, the property was sold to MERS at a foreclosure auction. On April 17, 2009, MERS commenced a proceeding to evict the plaintiff from the property, in Civil Court, Queens County (Index No. 61404/09). On June 23, 2009, the parties signed a Stipulation of Settlement, stating that MERS was granted judgment with right of possession. On July 16, 2010, the warrant of eviction was executed. On January 31, 2017, the Referee's deed to MERS was recorded. On December 29, 2017, MERS transferred the property to Carrington, and the deed was recorded, on February 14, 2018. On June 11, 2018, the plaintiff commenced the within action alleging a claim for adverse possession.

On a motion to dismiss, pursuant to CPLR 3211(a)(7), the court must accept the facts alleged by the plaintiff as true and liberally construe the complaint, according it the benefit of every possible favorable inference (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 406, 414 [2001]). It is well-established that on a motion to dismiss, pursuant to CPLR 3211(a)(7), the inquiry is limited to whether, looking at the four corners of the complaint, it states a cause of action cognizable at law (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). In addition, where documentary evidence definitively contradicts the plaintiff's factual allegations and conclusively disposes of the plaintiff's claim, dismissal pursuant to CPLR 3211(a)(1) is warranted (*see DiGiacomo v Levine*, 76 AD3d 946, 949 [2d Dept 2010]; *Berardino v Ochlan*, 2 AD3d 556, 557 [2d Dept 2003]).

Applying these principles to the case at bar, Carrington's motion to dismiss the complaint against it, pursuant to CPLR 3211(a)(1) and (a)(7), is granted. Plaintiff brought this action to quiet title, alleging in the complaint that she acquired title to the subject real property by way of adverse possession. In 2008, the Legislature enacted changes to the adverse possession statutes contained in RPAPL Article 5, which took effect on July 7, 2008 (*see L 2008, ch 269; see Pakula v Podell*, 103 AD3d 864 [2d Dept 2013]). Since it is alleged in the complaint that title vested by adverse possession, in 2015, the law in effect following the amendments is applicable to the plaintiff's claim.

To establish a claim of title to real property by adverse possession, the party must prove by clear and convincing evidence that the possession was (1) hostile and under claim of right; (2) actual; (3) open and notorious; (4) exclusive; and (5) continuous for the statutory period of 10 years (RPAPL 501; *see 168-170 Flushing Ave, LLC v February 22, LLC*, 165 AD3d 742 [2d Dept 2018]). As relevant here, “a claim of right” requires “a reasonable basis for the belief that the property belongs to the adverse possessor or property owner” (RPAPL 501 [3]).

Here, this Court finds that the plaintiff failed to adequately state a claim for adverse possession of the subject property. In the complaint, plaintiff alleges that, on July 24, 2002, Olympia commenced a foreclosure action against her and that, on February 14, 2003, a Judgment of Foreclosure and Sale was entered with the Clerk of the Court, directing the referee to sell the subject property at a public auction and file a report of sale. The complaint further alleges that, “[o]n or about December 7, 2005, the Referee executed a Referee’s Report of Sale (the Report) wherein the Referee reported that he conducted a foreclosure auction of the Premises, on October 21, 2005. The Referee represented in the Report that he subsequently executed, acknowledged and delivered to the purchaser, Mortgage Electronic Registration Systems (“MERS”), a Referee’s Deed to the Premises. MERS became the owner of the Premises, on October 21, 2005.” Plaintiff then alleges that, from October 21, 2005 until the present, she occupied the premises and acted as the owner by making improvements and repairs on the property. She further claims that she had “a reasonable basis to believe that she was the owner of the Premises for the last 12 years by reason that the foreclosure sale had been abandoned because the Referee did not record the MERS Deed, until January 13, 2017.”

The documentary evidence presented by Carrington, however, conclusively establishes that the plaintiff, during the statutory period, acknowledged MERS’ ownership of the subject property, thereby defeating the plaintiff’s assertion that, while in possession of the premises since October 21, 2005, she had a reasonable basis to believe that she was the property owner (*see Van Gorder v Masterplanned, Inc.*, 78 NY2d 1106 [1991]; *see e.g. BPS Funding Group LLC v Moyal*, 2017 NY Slip Op 31666[U], \*\*10 [Sup Ct, Kings County 2017]; *Snipes v. City of New York*, 43 Misc 3d 1203[A] [Sup Ct, New York County 2014]). In particular, Carrington submitted prior court records related

to the eviction proceeding brought by MERS against the plaintiff, in April 2009, and a subsequent Stipulation of Settlement, signed by the parties, stating that judgment was granted in favor of MERS with possession. In addition, Carrington presented a Court Order, dated May 19, 2010 (J. Rosengarten), in which the plaintiff's motion to stay the eviction from the property, which was sold pursuant to the Judgment of Foreclosure and Sale in the foreclosure action, on the grounds that her husband had a pending bankruptcy petition, was denied. Carrington also submitted the warrant of eviction, which was executed in July 2010.

The motion by MERS to dismiss the complaint against it pursuant to CPLR 3211(a)(1) and (a)(7) is also granted. It is well-settled that "[p]redecessors in title who claim no interest in the property are neither necessary nor proper parties to an action to quiet title" (McGahey v Topping, 255 AD2d 562 [2d Dept 1998]). Here, MERS claims no interest in the real property which is the subject of this action, having conveyed its interest to Carrington, prior to the commencement of the action by way of a deed recorded on February 14, 2018. Moreover, the plaintiff does not oppose dismissal of the complaint against MERS on these grounds.

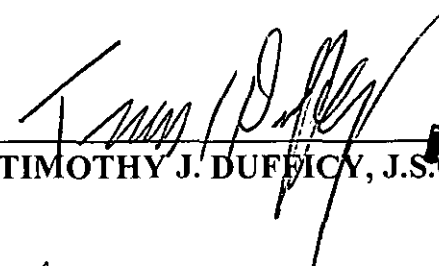
Accordingly, it is

**ORDERED** that the motion by defendant Carrington Mortgage Services, LLC (Carrington) to dismiss the complaint, pursuant to CPLR 3211(a)(1) and (a)(7), is granted; and it is further

**ORDERED** that the motion by defendant Mortgage Electronic Registration Systems (MERS) to dismiss the complaint against it, pursuant to CPLR 3211(a)(1) and (a)(7), is also granted.

The foregoing constitutes the decision and order of this Court.

**Dated: April 1, 2019**

  
TIMOTHY J. DUFFICY, J.S.C. **FILED**  
APR - 5 2019  
COUNTY CLERK  
QUEENS COUNTY